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2	Deputy Commissioner   SEAN ROONEY			
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10	BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT			
11	OF THE STATE OF CALIFORNIA			
12	In the Matter of:	NMLS NO.: 1337342		
13	THE COMMISSIONER OF BUSINESS			
14		STATEMENT OF ISSUES		
15	Complainant,			
16	v.			
17	TERRI K. MCALAVY,			
18	Respondent.			
19				
20	The Commissioner of Business Oversight (Commissioner) is informed and believes, and based			
21	upon such information and belief, alleges and charges Terri K. McAlavy (McAlavy) as follows:			
22	I.			
23	<u>Jurisdiction</u>			
24	1. The Commissioner has jurisdiction over the licensing and regulation of persons			
25	engaged in the business of making or brokering residential mortgage loans, including mortgage loan			
26	originators, under the California Financing Law (CFL) (Fin. Code, § 22000 et seq.) and the California			
27	Residential Mortgage Lending Act (Fin. Code § 50000 et seq.) (CRMLA).			
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- 2. On or about May 31, 2018, McAlavy applied to the Commissioner for a mortgage loan originator license under the CFL and CRMLA.
- 3. The Commissioner has determined to deny the application for a mortgage loan originator license of McAlavy because McAlavy: (1) has a felony theft conviction involving an act of fraud, dishonesty, a breach of trust, or money laundering; (2) fails to meet the minimum threshold requirement that she demonstrates such financial responsibility, character, and general fitness as to command the confidence of the community and to warrant a determination that the mortgage loan originator will operate honestly, fairly, and efficiently; and (3) knowingly made an untrue statement during the course of licensure with the intent to impede, obstruct, or influence the administration or enforcement of the law governing mortgage loan originators.

### II.

### **Statement of Facts**

- 4. To become licensed by the Commissioner as a mortgage loan originator (MLO), an individual must submit a uniform application form (known as the MU4 form) through the Nationwide Mortgage Licensing System and Registry (NMLS).
- 5. On or about May 31, 2018, McAlavy applied for an MLO license by filing a Form MU4 (Application) through the NMLS. Her application was sponsored by a lender licensed under the CFL and CRMLA.
- 6. Question F(1) of the Application asks whether the applicant has ever been convicted of or pled guilty or nolo contendere in a domestic, foreign, or military court to any felony.
  - 7. McAlavy answered "Yes" to question F(1).
- 8. On or about August 27, 1998, McAlavy pled guilty to a felony first degree theft of property exceeding \$1,500.00 in Vancouver, Washington. Between December 1996 and July 1997, while working as a bookkeeper, McAlavy unlawfully obtained property of her employer by engaging in a series of transactions constituting a common scheme or plan by using deception.
- 9. On or about October 8, 1998, the court sentenced McAlavy to a term of 90 days confinement, and ordered her to pay restitution in the amount of \$16,378.09, as well as fines and fees. McAlavy was placed under community supervision for 2 years and prohibited from employment

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involving handling of or accessing funds.

- 10. Question K(6) of the Application asks whether any state or federal regulatory agency ever "denied or suspended your registration or license or application for licensure, disciplined you, or otherwise by order, prevented you from associating with a financial services-related business or restricted your activities." McAlavy answered "No" to this question.
- 11. When submitting the Form MU4, applicants use an electronic signature to attest, under penalty of perjury, that the information contained in an application is current, complete and accurate. McAlavy's MLO license Application reads, in part:

I Terri K McAlavy (1337342) . . . swear (or affirm) that I executed this application on my own behalf, and agree to and represent the following:

. . .

That the information and statements contained herein, including exhibits attached hereto, and other information filed herewith, all of which are made a part of this application, are current, true, accurate and complete and are made under the penalty of perjury, or un-sworn falsification to authorities, or similar provisions as provided by law.

. . .

If an Applicant has made a false statement of a material fact in this application or in any documentation provided to support the foregoing application, then the foregoing application may be denied.

- 12. On or about March 29, 2017, the California Department of Real Estate (DRE) denied McAlavy's application for an MLO license endorsement because of McAlavy's felony theft conviction involving dishonesty, breach of trust and fraud.
- 13. On or about February 12, 2016, McAlavy filed an application with the DRE for an MLO license endorsement. On or about September 27, 2016, the DRE filed a Statement of Issues seeking to deny McAlavy's application for an MLO license endorsement.
- 14. McAlavy requested a hearing, and the matter was heard by the Office of Administrative Hearings in Los Angeles, California, on or about February 2, 2017.
- 15. After receiving oral and documentary evidence and hearing McAlavy's and DRE's argument, the Office of Administrative Hearings issued a decision denying McAlavy's application for an MLO license endorsement. The decision became effective on March 29, 2017.

- 16. McAlavy knowingly responded falsely to Question K(6) in violation of Financial Code sections 22170, subdivision (b), and 50512, subdivision (b). McAlavy also failed to upload the DRE action to her MLO Application.
- 17. On or about August 31 and December 5, 2018, McAlavy amended her MLO Application and answered "Yes" to Question K(6) only after the Department notified McAlavy about her false response and demanded that McAlavy revise her response on the MLO Application and disclose the DRE MLO license application denial.
- 18. McAlavy's amended Application also states that a state or federal regulatory agency or foreign financial regulatory authority or self-regulatory organization found McAlavy to have made a false statement or omission or been dishonest, unfair or unethical. No further explanation was given regarding this response.

#### III.

## **Felony Conviction**

- 19. The Commissioner "shall deny" an application for an MLO license unless he makes, at a minimum, specified findings, including that the applicant has not been convicted of, or pleaded guilty or no contest to, a felony during the seven-year period preceding the date of the application, or at any time preceding the date of the application, if such felony involved an act of fraud, dishonesty, a breach of trust, or money laundering. (Fin. Code, §§ 22109.1, subd. (a)(2)(A), and 50141, subd. (a)(2)(A).)
- 20. As described in paragraphs 6 to 9, McAlavy was convicted of a felony first degree theft by deception, in August 1998. Between December 1996 to July 1997, while working as a bookkeeper, McAlavy unlawfully obtained property of her employer by engaging in a series of transactions constituting a common scheme or plan by using deception.
- 21. On or about October 8, 1998, McAlavy was sentenced to 90 days confinement, and ordered to pay restitution in the amount of \$16,378.09, as well as fines and fees. McAlavy was placed under community supervision for 2 years, and prohibited from employment involving handling of or accessing funds.

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- 22. McAlavy's felony theft conviction involved acts of fraud, dishonesty, and a breach of trust.
- 23. Accordingly, under Financial Code sections 22109.1, subdivision (a)(2)(A) and 50141, subdivision (a)(2)(A), the Commissioner must deny McAlavy's MLO license application.

#### IV.

# **Withheld Information and Material Misstatement**

- 24. The Commissioner may deny an application for an MLO license if the applicant withholds information or makes a material misstatement in the application. (Fin. Code, §§ 22172, subd. (a)(2), and 50513, subd. (a)(2).)
- 25. As described in paragraphs 10 to 18, McAlavy answered "No" to question K(6) in her initial Application on May 31, 2018, although she was supposed to answer "Yes." because of her MLO license endorsement denial by the DRE.
- 26. Thus, McAlavy withheld information and made a material misstatement in her Application when she falsely responded to Question K(6) in violation of Financial Code sections 22170, subdivision (b), and 50512, subdivision (b).
- 27. Accordingly, under Financial Code sections 22172, subdivision (a)(2), and 50513, subdivision (a)(2), McAlavy's Application should be denied.

### V.

# **Character and General Fitness**

- 28. The Commissioner "shall deny" an application for an MLO license unless he makes, at a minimum, specified findings, including that the applicant has demonstrated such financial responsibility, character, and general fitness as to command the confidence of the community and to warrant a determination that the applicant will operate honestly, fairly, and efficiently as a mortgage loan originator. (Fin. Code, §§ 22109.1, subd. (a)(3), and 50141, subd. (a)(3).)
- 29. As described in paragraphs 6 to 9, McAlavy was convicted of a felony first degree theft, which involved acts of fraud, dishonesty, and a breach of trust by unlawfully obtaining property of her employer and engaging in a series of transactions constituting a common scheme or plan by using deception.

- 30. Further, as described in paragraphs 10 to 18, McAlavy failed to disclose her DRE MLO license application denial until after the Commissioner discovered the DRE decision denying her MLO license application and asked McAlavy to amend her Application and disclose the DRE order.
- 31. McAlavy also admits that a state or federal agency or regulatory agency found her to have made a false statement or omission or been dishonest, unfair or unethical.
- 32. McAlavy's felony theft conviction, false response on the MLO Application, and failure to disclose the DRE denial action cast doubt on McAlavy's character and general fitness to command the confidence of the community that she would operate honestly and fairly as a mortgage loan originator, as described in Financial Code sections 22109.1, subdivision (a)(3); and 50141, subdivision (a)(3).

#### VI.

### Commissioner's Authority to Deny Application

- 33. Financial Code sections 22109.1 and 50141 contain substantially similar language and provide in relevant part:
  - (a) The commissioner shall deny an application for a mortgage loan originator license unless the commissioner makes, at a minimum, the following findings:

. . .

(2) (A) The applicant has not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court during the seven-year period preceding the date of the application for licensing and registration, or at any time preceding the date of application, if such felony involved an act of fraud, dishonesty, a breach of trust, or money laundering. Whether a particular crime is classified as a felony shall be determined by the law of the jurisdiction in which an individual is convicted.

. . .

(3) The applicant has demonstrated such financial responsibility, character, and general fitness as to command the confidence of the community and to warrant a determination that the mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of this division.

(Fin. Code, §§ 22109.1 & 50141.)

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1	34.	Financial Code sections	s 22172 and 50513 contain substantially similar language and	
2	provide in relevant part:			
3		(a) The commissioner m	nay do one or more of the following:	
4		(2) Deny, suspend, revo	oke, condition, or decline to renew a mortgage	
5	loan originator license if an applicant or licensee fails at any time to meet the requirements of Section or withholds information or			
6 7		-	atement in an application for a license or license	
8	(Fin. Code, §§ 22172 & 50513.)			
	VII.			
9	<u>Prayer</u>			
10	The Commissioner finds, by reason of the foregoing, that McAlavy's 1998 felony theft			
11	conviction involved an act of fraud, dishonesty, a breach of trust, or money laundering; McAlavy			
12	knowingly made a false statement on her MLO Application; and failed to disclose the DRE denial			
13	action. McAlavy admits that a state or federal regulatory agency or regulatory authority found her to			
14	have made a false statement or omission or been dishonest, unfair or unethical. The felony theft			
15	conviction, false statement and failure to disclose the DRE denial action show that McAlavy lacks the			
16	character and general fitness to command the confidence of the community and the Commissioner			
17	cannot determine that McAlavy will be able to operate honestly, fairly, and efficiently within the			
18	purposes of th	purposes of the CFL and CRMLA.		
19	Financial Code sections 22109.1, 22172, 50141, and 50513 mandate that the Commissioner			
20	deny the application for a mortgage loan originator license of Terri K. McAlavy.			
21	WHEREFORE IT IS PRAYED, by reason by the foregoing, pursuant to Financial Code			
22	sections 22109.1, 22170, 50141 and 50512, that Terri K. McAlavy's application for a mortgage loan			
23	originator license be denied.			
24	Dated: August 20, 2019		Manuel P. Alvarez	
25	San Diego, Ca	alifornia	Commissioner of Business Oversight	
26			By	
27			Afsaneh Eghbaldari Counsel	
28			Enforcement Division	